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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,307	02/01/2001	Bernd Burchard	55586/45107	8232
21874	7590	03/15/2005	EXAMINER	
EDWARDS & ANGELL, LLP P.O. BOX 55874 BOSTON, MA 02205			ABEBE, DANIEL DEMELASH	
		ART UNIT	PAPER NUMBER	
		2655		
DATE MAILED: 03/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/775,307	BURCHARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel D Abebe	2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 29-54 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 29-54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-41, 43-45 and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (5,694,467) in view of Lumelsky (6,246,672).

As to claim 29, Young teaches a portable recording and playback device integrated into a headset (Fig.3, 40) comprising:

A microphone (42);

A speech recognition unit (28) (inherently having a memory to store commands) for recognizing voice commands and instructing the device accordingly.

Young doesn't explicitly teach where the voice command are to control playback functions. Lumelsky however teaches a recording and playback device (Fig.4), where voice commands are used to control the functions of the device (Col.22, lines 39-50).

it would have been obvious to one of ordinary person in the skill to combine the two teachings for the purpose of providing the user a completely hands free interface.

Young teaches a music source (30) and the standard MP3 format and MP3 player are inherent in Young's teaching.

As to claims 30, 32 and 33 Young teaches a data interface (16) and further states where "Music Source 30 is connected to Control Box 20 through a Music Feed 16

over which the Music Source 30 transmits electrical signals representative of sound" and. "the headset unit 40 is a cordless arrangement using bi-directional infrared links." (Col.5, line 52).

As to claims 31, 34 and 35-36, Young teaches a music source (30) and MP3 is standard audio format and MP3 audio player are standard therefore inherent in Young's system.

The devices claimed in Claims 37-41, 43-46 and 48 are included in the Young's device (Fig.3, 41, 44, 42, 28).

Claims 49-53 are analogous to the claims addressed above and are rejected for the foregoing reasons by Young in view of Lumelsky.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42, 46, 47 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of Lumelsky as applied to the claims above, and further in view of Ruppert et al. (6,236,969).

As to claims 46 and 47, Young doesn't explicitly teach where the battery is.

Ruppert teaches a cellular device used for recording and reproducing audio telephony data, integrated into a headband (Fig.1), the device comprising:

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A microphone (18);

A memory (101; Fig.8);

A speech recognition unit ... (100); and

A battery contained in the headband (40).

It would have been obvious to one of ordinary skilled in the art to place the battery in the headset in Young's teaching, in view of Ruppert for charging the device.

With respect to claims 42 and 54, Official Notice is taken activating speech recognition unit as claimed is well known in the art and would be obvious in Young's art to start the speech recognition only when its required.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 29 and 49 have been considered but are moot in view of the new ground(s) of rejection. Controlling the function of the recording/playback device which is introduced in the present amendment is taught by Lumelsky.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel D Abebe whose telephone number is 703-308-5543. The examiner can normally be reached on monday-friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on 703-305-4827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Daniel Abebe Primary Examiner A.U. 2655

A handwritten signature in black ink, appearing to read "Daniel Abebe".

March 9, 2005